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09/550,049

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David R. MacLean

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EXAMINER

GRAY, PHILLIP A

ART UNIT

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID R. MacLEAN

Appeal 2008-4111
Application 09/550,049
Technology Center 3700

Decided: March 27, 2009

Before WILLIAM F. PATE, III, JENNIFER D. BAHR, and MICHAEL W.
O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

David R. MacLean (Appellant) seeks our review under 35 U.S.C.
§ 134 of the final rejection of claims 22-27. Claims 1-6 are allowed. Claims
7-21 are withdrawn. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The claimed invention is to a guard device for a hypodermic needle in order to prevent accidental touch of the needle's end.

Claim 22, reproduced below, is representative of the subject matter on appeal.

22. Safety device, comprising:
a collar;
a neck extending from said collar;
a housing pivotably connected to the end of said neck
away from said collar; and
a latch member extending from said neck in a direction
towards the center of said collar;
wherein when said collar is placed about a vial and
moved toward a hub of said vial until adjacent to one
end of said hub, said latch member is latched onto
another end of said hub.

THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Olliffe	US 5,135,509	Aug. 4, 1992
Mumford	US 6,575,941 B1	Jun. 10, 2003

THE REJECTIONS

The following Examiner's rejections are before us for review:

Claims 22-27 are rejected under 35 U.S.C. § 102(e) as being anticipated by Mumford.

Claims 22 and 25 are rejected under 35 U.S.C. § 102(b) as being anticipated by Olliffe.

ISSUE

The Appellant contends the Examiner erred in rejecting the claims 22 and 25 with Mumford because "Mumford fails to disclose a collar 'placed about a vial and moved toward one end of the hub of the vial.' Nor does Mumford disclose any 'neck' extending from the collar, or 'any latch member extending from the neck in a direction to the center of the collar' as required in the claims." App. Br. 10. Additionally, the Appellant contends that "Mumford fails to disclose, explicitly or inherently, the claimed feature that when the collar is placed about a vial and moved toward a hub of the vial until the adjacent one end of the hub, the latch member is latched onto another end of the hub." Reply Br. 3.

The Examiner found:

Mumford discloses a safety device (as in figures 8, 9 and 1B for instance) comprising a collar (lower portion of element 2, bottom plane of element), a neck (middle portion of element 2, upward side walls) extending from collar, a housing (6) pivotable connected to the neck, a latch member (upper portion of element 2, upper plane element with circular aperture) integrated to neck and flexible relative to collar, wherein when said collar is placed about a vial (as in figure 1b) and moved toward

hub (110) of said vial (114) said latch member is latched onto another end of the hub (as in figure 1B).

Ans. 4-5 (bold original).

The Appellant contends the Examiner erred in rejecting the claims 22 and 25 with Olliffe because Olliffe “does not disclose any latch member that extends from the neck in a direction towards the center of the collar or that the collar is placed about a vial and moved toward the hub of the vial, or of any latch member that latches onto any portion of the hub when the collar is moved.” Reply Br. 5.

The Examiner found:

Olliffe discloses a safety device (as in figures 8c) comprising a collar (lower most portion of element 8 surrounds hub), a neck (middle portion extending from element 8, upward extending sidewall), a housing (7), a latch member (upper portion of element 8, below hub portion 25 which is in a latching state in figure 8C and that is holding the housing open and on the hub) integrated to neck and flexible relative to collar, wherein device is fully capable of the function of when said collar is placed about a vial and moved toward hub (toward bottom of figure 8c) said latch member is latched onto another end of the hub. This vial attaching function could be accomplished if the Olliffe device was placed on the device in a housing down state.

Ans. 6-7 (bold original).

The issue before us is as follows:

Has the Appellant shown the Examiner erred in finding that Mumford or Olliffe anticipates the claimed inventions? This issue turns on: (1) whether Mumford describes a latch member extending from the neck in a direction toward the center of the collar, and when the collar is placed about a vial and moved toward the hub of the vial until the collar is adjacent to one

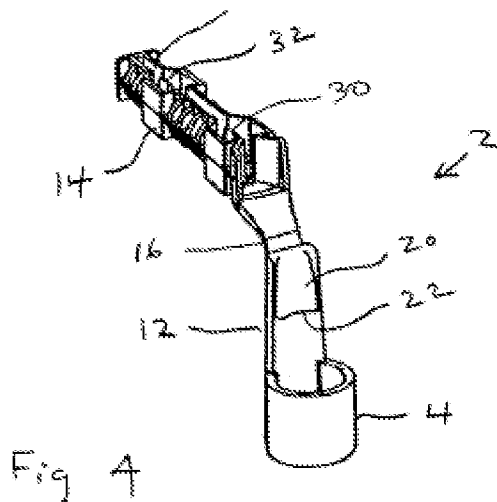
end of the hub, wherein then the latch member is latched onto another end of the hub as such would be interpreted by one of ordinary skill in the art when read in light of the Specification and (2) whether Olliffe describes a latch member as the claimed structure would be interpreted by one of ordinary skill in the art when read in light of the Specification.

FINDINGS OF FACT

We find that the following enumerated findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. The Appellants claimed invention is depicted in Figure 4 reproduced below.

Appellant's Figure 4.



Depicted is Appellant's Figure 4.

2. Mumford's Figure 9 is reproduced below.

Mumford's Figure 9.

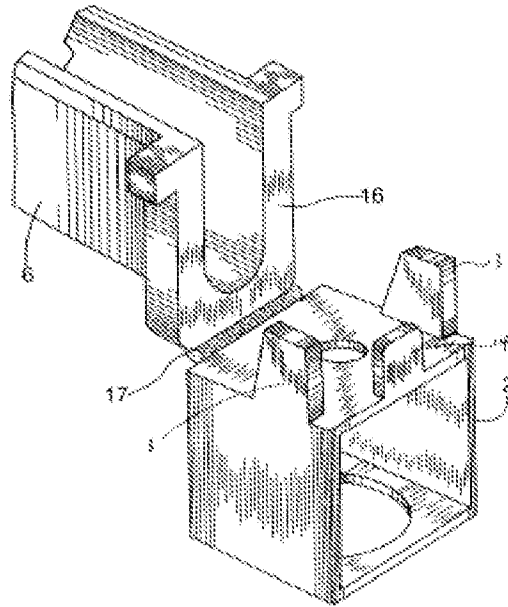


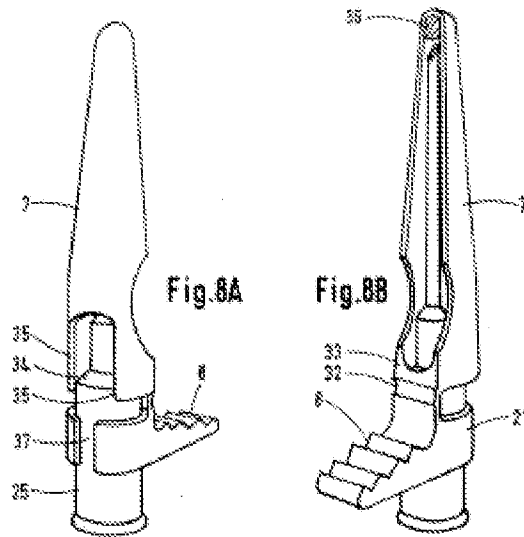
FIG. 9

Depicted is Mumford's Figure 9.

3. Mumford's base 2 is a rectangular cylinder with a hole 40 (see Fig. 8 for reference label) that is used for venting during the manufacturing process. The bottom surface of base 2 has a cut-out (not labeled but shown in Figs. 8 and 9). The top surface of base 2 has a cut-out (not labeled but shown in Figs. 8 and 9). Additionally, the top surface of base 2 has lugs 3 and 4 and a hinge 17 connect to one edge of base 2. Lugs 3 and 4 permit secure fitting of tabs 7 on protrusion 16 at the base of longitudinal member 6. *See Mumford, Figs. 8 and 9 and col. 10, ll. 8-35 and col. 12, ll. 13-36.*

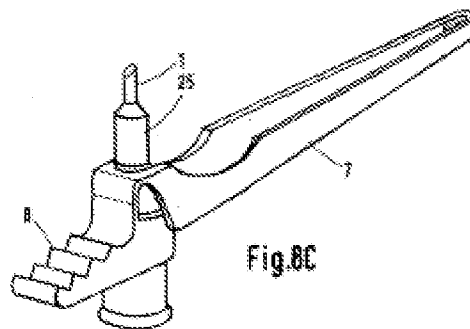
4. Olliffe's Figures 8a, 8b and 8c are reproduced below.

Olliffe's Figures 8a and 8b



Depicted are Olliffe's Figures 8a and 8b

Olliffe's Figure 8c.



Depicted is Olliffe's Figure 8c.

5. Olliffe describes this embodiment as operating as follows:

the operating arm 8 is connected to a hinge 32 connected to a forked portion which closes off the base of the open side of shroud 7. In the open position of the shroud shown in FIG. 8C, forked portion 33 lies on the shoulder 34 of needle boss 25. Shroud 7 may be resiliently held in this position by ears 35 engaging over sleeve 21. Downward thumb pressure on arm 8 causes the shroud 7

to return to the closed position by forked portion 33 riding over shoulder 34.

Olliffe, col. 8, ll. 2-11 (bold original).

PRINCIPLES OF LAW

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). To establish anticipation, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. *Scripps Clinic & Research Found. v. Genentech Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991).

ANALYSIS

As shown by the findings of facts 2 and 3 *supra*, the structure (top surface of base 2) that the Examiner has used in Mumford to satisfy the claim limitation of the latch member does not extend from a neck in a direction towards the center of a collar. Instead, the structure is the top portion of a square cylinder structure that is attached to the sides of base 2. This structure is not arranged as in the claim, *viz.*, in a direction towards the center of the collar. The Examiner has construed the claim in a vacuum in order to satisfy the claim limitation instead of reading the claim in light of the Specification as it would be understood by one of ordinary skill in the

art. When the claim is construed properly, the structure of the base 2 that the Examiner has relied on does not satisfy the claim element of a latch member and the arrangement and interactions of such with the other claimed structures. In view of the foregoing, we will not sustain the Examiner rejection of the claims with Mumford.

Olliffe's guard does satisfy the claim limitations of a collar (sleeve 21), neck (hinge 32) extending from the collar and a housing (shroud 7) pivotally connected to the neck. Compare Facts 1 and 4. However, Olliffe's structure (forked portion 33) relied on by the Examiner to satisfy the claimed latch member does not. As shown, in fact 4, this structure is not a latch member as one of ordinary skill in the art would understand a latch member to be. To one of ordinary skill in the art, the Olliffe's structure relied upon by the Examiner to satisfy the latch member is a forked extension that extends from the sleeve (collar) to connect the shroud (housing) and permit the ears 35 to engage over the sleeve 21 (collar) to hold the shroud 7 (housing) in place until a downward pressure is applied to arm 8 such that forked portion 33 (the part relied on by the Examiner to read on the latch member) rides over the shoulder 34 of needle boss 25. *See* Fact 5. In view of the foregoing, we will not sustain the Examiner's rejections of the claims with Olliffe.

CONCLUSION

The Appellant has shown the Examiner erred in finding that Mumford or Olliffe anticipate the claimed inventions.

Appeal 2008-4111
Application 09/550,049

DECISION

The Examiner's decision to reject claims 22-27 with Mumford and claims 22 and 25 with Olliffe is:

REVERSED

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